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115 STATE STREET
MONTPELIER, VT 05633-5701

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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Todd Daloz
Office of the Attorney General
109 State Street
Montpelier, VT 05609

FROM: Katie Pickens, Committee Assistant *Katie*
Legislative Committee on Administrative Rules

DATE: April 17, 2015

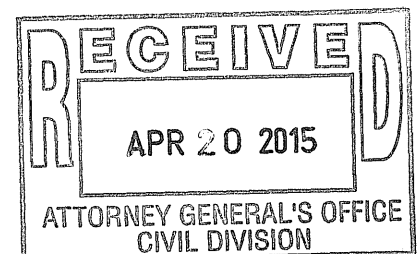
SUBJECT: 14-P57 - Office of the Attorney General/**Consumer Protection Rule CP 121 -
Labeling of Food Produced with Genetic Engineering**

The Legislative Committee on Administrative Rules considered the above-mentioned rule at its meeting on April 16, 2015. The committee approved the rule with the modifications submitted by letter of April 13, 2015 from Todd Daloz, Assistant Attorney General, to Rep. Patsy French, Chair, Legislative Committee on Administrative Rules (copy attached).

In addition, the Office of the Attorney General is authorized, pursuant to Sec. 4(i) of the committee's rules, to make modifications of a technical and typographical nature and, if necessary, additional modifications consistent with those specifically approved.

The procedure for filing an adopted rule can be found in 3 V.S.A § 843.

cc: Louise Corliss, APA Clerk, Office of the Secretary of State



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April 13, 2015

Rep. Patsy French, Chair
Legislative Committee on Administrative Rules
115 State Street
Montpelier, Vermont 05633 -5301

VIA EMAIL (p_french@myfairpoint.net)

Re: Final Proposed Rule Filing, CP 121 – Labeling of Food Produced with Genetic Engineering

Dear Rep. French:

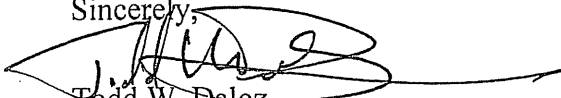
In response to concerns raised by members the Legislative Committee on Administrative Rules, the Attorney General's Office has made three changes to the final proposed version of Rule CP 121, as it was submitted to the Committee on March 18, 2015. The attached version contains these changes along with the addition of the full statutory definition of "consumer" from 9 V.S.A. § 2451a, which I explained would be added to the rule in my letter to LCAR dated April 2, 2015. In brief, here are the responsive changes:

- The Committee was concerned about requiring labeling and recordkeeping for bake-sale fundraisers or other incidental food sales.
 - In response, a sentence has been added to the definition of "retail sale," CP121.01(21), exempting "isolated or occasional sales of food by a person who is not regularly engaged in the business of such sales" from being considered a "retail sale"
 - See page 3 of the attached rule, subsection CP 121.01(21), for the new wording.
- The Committee was concerned about the record retention requirements for retailers who also produce foods for retail sale and are therefore considered "manufacturers" under the rule and Act 120. Because manufacturers and retailers have different records retention requirements under the rule, the Committee thought it would be difficult for retailers to adequately retain records for varying lengths of time based on the activity to which the record pertained (e.g. a one-year period for unpackaged potatoes, and a three-year period for prepared potato salad).
 - In response, a sentence has been added to CP 121.04(b), the records retention requirement, limiting the period all retailers (defined as people primarily engaged in retail food sales) must retain their records to one year, regardless of whether they are otherwise considered to be a manufacturer under the rule and Act 120.
 - See page 7 of the attached rule, subsection CP 121.04(b), for the new wording

- The Committee was concerned about the potential penalty available should a person fail to keep records under CP 121.04(b).
 - In response, a new subsection has been added to the penalties provision in 121.04(e) setting the maximum available penalty of \$1,000 for a first violation of the recordkeeping provision of the rule. Subsequent recordkeeping violations would still fall under the general penalty provisions of CP 121.04(e)(i).
 - See page 8 of the attached rule, subsection CP 121.04(e)(ii), for the new wording.

I look forward to speaking with the Committee this Thursday, April 16th, and am happy to answer any questions members may have in advance.

Sincerely,



Todd W. Dalez
Assistant Attorney General

Encl.

Cc: Katie Pickens, via email (KPickens@leg.state.vt.us)
Aaron Adler, via email (AAdler@leg.state.vt.us)